IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 3605 of 2007(D)

PETITIONER:

JOSE MAVELI,
PRESIDENT, JANASEVA SISUBHAVAN,
ALUVA.

BY ADV. SRI.B.S.SWATHY KUMAR
SMT.P.A.ANITHA

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.I.V.PRAMOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.3605/07

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE CERTIFICATE OF REGISTRATION.

EXT.P2: TRUE COPY OF THE CERTIFICATE OF RECOGNITION.

EXT.P3: TRUE COPY OF CRL.M.P.475/07 BEFORE THE J.F.M.C. ALUVA DTD.27.1.07.

EXT.P3(a): TRUE COPY OF THE NOTING IN CRL.M.P.475/07 AND ITS TYPED VERSION.

EXT.P4: TRUE COPY OF CRL.M.P.476/07 BEFORE THE J.F.C.M. ALUVA DTD.27.1.07.

EXT.P4(a): TRUE COPY OF THE NOTING IN CRL.M.P.476/07 AND ITS TYPED VERSION.

EXT.P5: TRUE COPY OF THE LETTER ISSUED BY THE STATION MASTER, KALAMASSERY RAILWAY STATION.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J

W.P(C).No.3605 OF 2007

Dated this the 9th day of February, 2007

JUDGMENT

The petitioner, President of an institution which pleads that it has the necessary recognition to be a “fit institution” under the provisions of Section 2 (h) of the Juvenile Justice (Care and Protection of Children) Act, 2000, hereinafter referred to as 'the Act', has filed this writ petition complaining that the Judicial First Class Magistrate, Aluva, on production of two children with necessary request under the Act, issued Exts.P3(a) and P4(a) orders to the following effect:

> The petition is returned. Produce the child before the Child Welfare Committee or the Chief Judicial Magistrate, as the case may be.

Different reliefs are sought for in this writ petition seeking directions to the concerned Magistrate to exercise authority under the Act etc.

2. By the interim order passed at the stage of admission on 1.2.2007, there is a direction that the petitioner will have interim custody of the children referred to in Exts.P3 and P4 for a period of four weeks, to be produced before this Court or such authority, as may be directed by this Court later on.

3. Section 29 of the Act provides that constitution of Child Welfare Committees and Section 62 of the Act provides for constitution of Advisory Boards. Section 29 occurs in Chapter III, which specifically relates to child in need of care and protection. The provisions of that chapter stand by themselves and the constitution of Child Welfare Committees, going by the provisions of Section 29, are obviously at variance with the constitution of Advisory Boards under Section 62 of the Act.

4. The learned Government Pleader submits on instructions that “Advisory Committees” have been constituted in all the districts of the State. If what have been constituted are Advisory Boards in terms of Section 62, they are not the

statutory committees to be called the Child Welfare Committees to exercise the statutory authority under Chapter III of the Act. If what have been constituted are Child Welfare Committees in terms of Section 29, then obviously, those committees will have to exercise authority under Section 29 of the Act and the relevant rules framed under the Act.

5. Taking note of the fact that Child Welfare Committees have not been constituted under the Act before it underwent an amendment as per Act 33 of 2006, this Court laid down in **Parvathy** v. **The superintendent, Corporation Relief Centre** (2002 (1) KLT 523) that in the absence of Child Welfare Committees being constituted for any district and because the committee constituted is to function as a Bench of Magistrates with the power under the Code of Criminal Procedure on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the First Class, such power can be exercised by the Metropolitan Magistrate or a Magistrate of the First Class until a Child Welfare Committee is constituted. Going by the ratio of

that decision, the Metropolitan Magistrate or the Judicial Magistrate of the First Class has been found entitled to exercise authority under Chapter III of the Act unless and until such Child Welfare Committees have come into being and starts functioning in terms of that Chapter. If that were so, particularly following the declaration law by this Court in exercise of writ jurisdiction as above, it is the bounden duty of every Judicial Magistrate of the First Class to exercise authority under Chapter III, including by following the procedure prescribed by Section 30 and to exercise such power as are available under Sections 31, 32, 33 etc. as also other relevant provisions of that Act and the statutory rules prescribed in that behalf. It has to be remembered that the primary concern behind the Act is to ensure that matters relating to care and protection of children are not left to hang in the corridors of courts or administrative authorities, but has to be taken up, considered and appropriate action taken without any delay. This is all the more so because the subject of all these exercise is nothing but children. Therefore, any Judicial Magistrate of the First Class exercising

jurisdiction within any district, where there is no child Welfare Committee functioning in terms of Section 29 of the Act, is duty bound to exercise authority under Chapter III of the Act and it shall be so done. It is so declared and directed.

6. The above legislative anxiety reflected in the Act, as amended by Act 33 of 2006, requires that the Government, by notification in the official gazette, constitutes Child Welfare Committees for every district, in terms of Section 29 of the Act within a period of one year from the date of the commencement of the amending act, Act 33 of 2006, which came into effect on 22.8.2006. Therefore, the State Government has a statutory duty to constitute such committees on or before 22.8.2007. If such action has not been taken, it is directed that it shall be so done, without fail.

7. In the larger interest of those unfortunate children who need care and protection under statutory provisions, it is appropriate that the State Government and other competent

authorities speed up the constitution of all Committees, Boards etc. as are required to be brought into existence to ensure the smooth, speed and meaningful functioning of the Act.

8. Following the interim order passed on 1.2.2007, the petitioner is directed to produce the children, in relation to whom Exts.P3 and P4 objections were filed, before the Judicial Magistrate of the First Class Court, Aluva within a period of 10 days from now and the learned Magistrate will take appropriate action in the light of what is stated above and in terms of the Act. The interim order will continue to govern the petitioner and the said children until they are produced before the learned Magistrate as aforesaid.

The writ petition is disposed of with the above directions.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.